

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE RUDY KIRK,)	No. C 06-0071 CW (pr)
)	
Petitioner,)	
)	ORDER DENYING REQUEST FOR
v.)	APPOINTMENT OF COUNSEL AND
)	GRANTING AN EXTENSION OF TIME
MELVIN HUNTER, DIRECTOR,)	FOR PETITIONER TO FILE TRAVERSE
DMH,)	
)	(Docket no. 19)
Respondent.)	
_____)	

On December 21, 2002, Petitioner was adjudicated a sexually violent predator under the provisions of California's Sexually Violent Predators Act, Cal. Welf. & Inst. Code § 6601, et seq. (SVPA), following a bench trial in the Sonoma County Superior Court. On the basis of that finding, he was ordered to be committed to a state mental health facility for a period of two years.

Petitioner filed this pro se petition for a writ of habeas corpus on January 9, 2006.

In an Order dated June 13, 2006, the Court directed Respondent to file an answer to the petition and granted Petitioner leave to file a traverse within thirty days after the answer was filed. Respondent filed his answer on August 11, 2006.

Petitioner has requested appointment of counsel in this action (docket no. 19). He alleges that he has limited access to "law books . . . which makes it very hard to work on [his] writ."

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes

1 a district court to appoint counsel to represent a habeas
2 petitioner whenever "the court determines that the interests of
3 justice so require" and such person is financially unable to
4 obtain representation. The decision to appoint counsel is within
5 the discretion of the district court. See Chaney v. Lewis, 801
6 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor
7 v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have
8 made appointment of counsel the exception rather than the rule by
9 limiting it to: (1) capital cases; (2) cases that turn on
10 substantial and complex procedural, legal or mixed legal and
11 factual questions; (3) cases involving uneducated or mentally or
12 physically impaired petitioners; (4) cases likely to require the
13 assistance of experts either in framing or in trying the claims;
14 (5) cases in which petitioner is in no position to investigate
15 crucial facts; and (6) factually complex cases. See generally 1
16 J. Liebman & R. Hertz, Federal Habeas Corpus Practice and
17 Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is
18 mandatory only when the circumstances of a particular case
19 indicate that appointed counsel is necessary to prevent due
20 process violations. See Chaney, 801 F.2d at 1196; Eskridge v.
21 Rhay, 345 F.2d 778, 782 (9th Cir. 1965).

22 The Court finds that appointment of counsel is not warranted
23 in this case. This is not an exceptional case that would warrant
24 representation on federal habeas review. Therefore, Petitioner's
25 request for appointment of counsel (docket no. 19) is DENIED.

26 Now that the Court has ruled on his request for appointment
27 of counsel, the Court grants Petitioner an extension of time to
28 file a traverse. Petitioner shall file his traverse no later than

1 sixty (60) days from the date of this Order. Should Petitioner
2 fail to do so, the petition will be deemed submitted and ready for
3 decision on the date his traverse is due.

4 This Order terminates Docket no. 19.

5 IT IS SO ORDERED.

6 DATED: 10/25/07



7 CLAUDIA WILKEN
8 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE RUDY KIRK,

Case Number: CV06-00071 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

MELVIN HUNTER et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 25, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lawrence Rudy Kirk 9962279
166-9
P.O. Box 5003 #7
Coalinga, CA 93210

Sharon R. Wooden
CA Attorney General's Office
455 Golden Gate Ave.
Suite 11000
San Francisco, CA 94102-7004

Dated: October 25, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk